

REMARKS

Claims 25 to 30 are added, so that claims 9 to 13 and 15 to 30 are therefore currently pending in the present application.

It is respectfully submitted that pending and considered claims are in condition for allowance.

As to the Notice of Non-Compliant Amendment of January 28, 2010, it indicates that the rejection of claim 17 under the second paragraph of 35 U.S.C. § 112 was not addressed in the prior response. This Replacement Amendment addresses the Section 112 (second paragraph rejection of claim 17).

Claim 17 was rejected under the second paragraph of 35 U.S.C. § 112 as being indefinite.

While the rejection may not be agreed with, to facilitate matters, claim 17 has been rewritten to better clarify the “interrupting transfer” feature. In particular, claim 17, as presented, provides for “monitoring of the data volume includes interrupting transfer of at least one isochronous channel and ~~through~~ limiting the number of data transfers for each of a plurality of network nodes”. As presented, it is believed and respectfully submitted that a person having ordinary skill in the art would understand claim 17, as presented. An example embodiment of the “interrupting transfer” feature is described in the Specification at page 5, lines 6 to 12.

It is therefore respectfully requested that the indefiniteness rejection be withdrawn.

Claims 9 to 13, 15 to 19, 21, 22, and 24 were rejected under 35 U.S.C. 103(a) as unpatentable over U.S. Patent No. 4,715,030 to Koch et al. ("Koch"), in view of U.S. Patent No. 6,587,875 ("Ogus").

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This

teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. See *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claim 9 includes the feature of a “monitoring arrangement for monitoring volume of incoming and outgoing data flowing through the network bridge and its memory, wherein the monitoring arrangement for monitoring is configurable by a higher-level instance, and is configured so that in addition to an analysis of the data, an operation on the data is performed.” Claim 17 includes features like those of claim 9.

The combination of Koch with Ogus is not proper because Koch specifically teaches away from measuring volume as in the Ogus reference. The Koch reference refers to reading source and destination addresses for every frame received, and storing every incoming frame within the RAM 98 without regard to the volume of contents received. (Koch, col. 9, lines 7 to 22). Since Koch is not concerned with monitoring the volume of frames, it plainly teaches away from Ogus so that it does not provide the claimed subject matter. A person of ordinary skill in the art would have no reason to combine Koch with a reference having a feature that Koch specifically excludes.

Also, Koch does not disclose or suggest a monitoring arrangement that is configurable by a higher-level instance, as provided for in the context of the claimed subject matter. Specifically, Koch’s system receives all incoming frames, has the address reader read the source and destination addresses of the incoming frame, stores the address into a local RAM,

and the system simultaneously stores the frame in memory 98 without the need to communicate with the processor to determine where the incoming frame should be stored. (Koch, col. 8, lines 40 to 50; and col. 9, lines 15 to 18). These processes of Fig. 4a occur directly and routinely without any interference from any higher-level instance. *Nowhere does Koch disclose or suggest that any part of the monitoring process may be configured by a higher level instance*, as provided for in the context of the presently claimed subject matter.

For at least the foregoing reasons, claims 9 and 17, as presented, are allowable, as are their respective dependent claims.

Additionally, claim 17 includes the further feature in which “monitoring of the data volume includes *interrupt transfer of at least one isochronous channel through limiting the number of data transfers for each of a plurality of network nodes*, and in which the monitoring arrangement for monitoring is configured so that in addition to an analysis of the data, a manipulation of the data is performed.

This feature is wholly absent from the Koch and Ogus references. Even if Ogus did refer to throttling bandwidth when a link is saturated, there is not even any mention of interrupting an *isochronous channel* or of limiting the number of data transfers for each of a plurality of network nodes. For at least these further reasons, claim 17 is allowable.

New claims 27 and 28 also include features analogous to the above discussed features of claim 17, and are therefore allowable for at least this further reason.

New claims 25 and 26 include the features of manipulating and analyzing data from the user data layer. In contrast, Koch and Ogus only concern reading data packet headers, and do not disclose any action related to the actual user data layer of transferred data. For at least these further reasons, new claims 25 and 26 are allowable.

Claims 10, 20, and 23 were rejected under 35 U.S.C. §103(a) as being unpatentable over Koch, in view of Ogus, and in further view of U.S. Patent 6,519,671 (“Kondou”).

Claim 10 depends on claim 9 and claims 20 and 23 depend from claim 17. Therefore claims 10, 20, and 23 are allowable for the same reasons as their respective based claims 9 and 17, since the additional reference does not cure – and is not asserted to cure – the critical deficiencies of the other references.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

New claims 25 to 30 do not add any new matter and are supported by the present application, including the specification. Claims 25 to 30 depend from claim 9, and they are therefore allowable for at least the same reasons.

Accordingly, it is submitted that all pending claims are allowable.

CONCLUSION

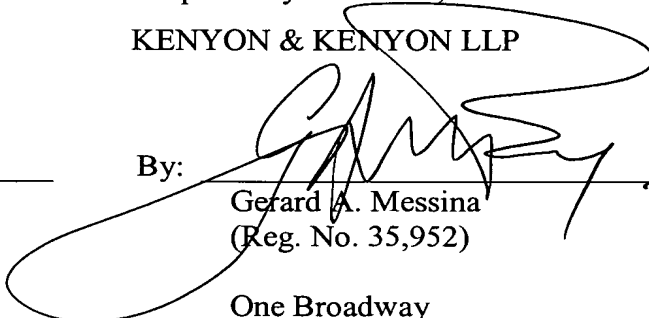
In view of the foregoing, it is respectfully submitted that all of the pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

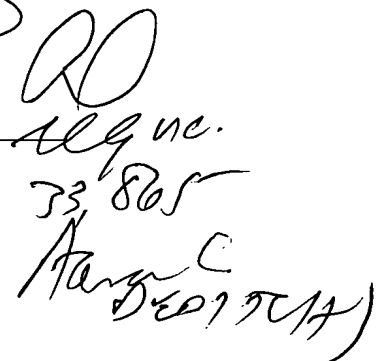
KENYON & KENYON LLP

Dated: 3/1/2010

By:


Gerard A. Messina
(Reg. No. 35,952)

One Broadway
New York, New York 10004
(212) 425-7200
CUSTOMER NO. 26646


RD
allg no.
33,805
Hargreaves
DEPT 1014